

1 Paul Alan Levy (pro hac vice)
2 Public Citizen Litigation Group
3 1600 20th Street NW
4 Washington, D.C. 20009
5 (202) 588-7725
6 plevy@citizen.org

7 Stephen Kirby
8 Kirby Law Office, PLLC
9 WSBA #43228
10 1312 N. Monroe Street
11 Spokane, Washington 99201
12 (509) 795-4863
13 kirby@kirbylawoffice.com

14 Phillip R. Malone (pro hac vice)
15 Juelsgaard Intellectual Property and Innovation Clinic
16 Mills Legal Clinic at Stanford Law School
17 Crown Quadrangle, 559 Nathan Abbott Way
18 Stanford, California 94305-8610
19 (650) 724-1900
20 pmalone@stanford.edu

21 UNITED STATES DISTRICT COURT
22 FOR THE EASTERN DISTRICT OF WASHINGTON

23 PREPARED FOOD PHOTOS, INC., }
24 f/k/a ADLIFE MARKETING }
25 & COMMUNICATIONS CO., INC., }
a Florida for profit corporation, }
26 Plaintiff, }
27 v. }
28 POOL WORLD, INC., a Washington for }
profit corporation, }
Defendant. }

No. 2:23-cv-00160-TOR

**SIXTH AFFIRMATION
OF PAUL ALAN LEVY**

Hearing March 28, 2025
6:30 PM

21. My name is Paul Alan Levy. I am lead counsel for defendant Pool World.

22 I make this affirmation in support of defendant's motion to enforce the Court's order
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24 compelling plaintiff Prepared Food Photos ("PFP") to produce documents.
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26 2. The opposition to that motion raises several issues that PFP's counsel never
27 addressed during our efforts to meet and confer in advance of filing the motion, and
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1 makes several unsubstantiated statements of fact which are, in fact, misleading or
2 incorrect. The main purpose of this affirmation is to provide the facts relating to
3 those concerns.

4 3. As noted in my Fifth Affirmation, my co-counsel and I made many attempts
5 to meet and confer with counsel for PFP before filing the motion to enforce the
6 Court's order, including a Zoom call on February 5, 2025. Throughout that period,
7 we explained to PFP's counsel that even though, under authority we cited to them,
8 they could be held to have waived any claims of privilege or need for confidentiality,
9 we were ready to engage in a discussion about the need to avoid disclosing any
10 categories of redacted material to see if we could find a solution to the dispute. But
11 counsel for PFP did not provide any specifics needs for confidentiality. At no time
12 did counsel for PFP raise **any** of the allegations about need for confidentiality that are
13 put forward in the opposition brief or its supporting affidavits. PFP's only objection
14 was relevance.

15 4. Shortly before the motion to enforce was filed, PFP produced another
16 tranche of documents, including, for example, the Stripe spreadsheet attached to my
17 Fifth Affirmation as Exhibit KK. Because this production raised more questions
18 about withheld material, we attempted to discuss those with counsel for PFP. For
19 example, it became clear that there must have been another payment processor; I
20 asked what company that was. My Fifth Affirmation alludes, in ¶¶ 17-18 and 22-24,
21 to our efforts to engage on those issues. Similarly, we asked PFP counsel to identify
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1 the other payment processor so that we could explore whether its records of
2 subscriber payments were accessible.

3 5. PFP outright refused to engage in further discussions, saying that our only
4 recourse to get more information would be to take oral depositions of PFP's officers
5 pursuant to Rule 30(b)(6). As a result, the information about payment processor
6 Payeezy discussed in the Fleurant Affirmation, and about PFP's failure to preserve
7 its records of payments via Payeezy from subscribers, was disclosed to undersigned
8 counsel for the first time in that affirmation.

9 6. We explained to PFP's counsel that we consider it imperative to get access
10 to the pertinent documents **before** the oral depositions because it appeared from what
11 we had seen that their clients' officers had been less than truthful in the past.
12 Paragraph 19 of my Fifth Affirmation shows that Rebecca Jones, an officer of PFP,
13 has submitted many false affidavits in support of default judgment motions (a context
14 in which she had reason to believe that her false statements would not be exposed).
15 Paragraphs 16 and 17 of that affirmation show that Douglas Fleurant, another PFP
16 officer, misled his counsel about the accessibility of Stripe data.

17 7. PFP contends that Pool World "has not endeavored" to depose its officers.
18 Opposition page 7. This is not correct. Pool World actively pursued the scheduling
19 of depositions in a manner that will best suit the needs of PFP's counsel and its
20 officers, who live in different parts of the East Coast. On March 14, PFP's counsel
21 finally agreed that his client's officers would appear for depositions in Florida, where
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he has his offices. At this writing, we are waiting for confirmation of the dates when
1 the officers based in Rhode Island will be available in Florida.
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3 8. Another false assertion in the Opposition, also on page 7, and also
4 unsupported by a citation to the record, is that Pool World has not contended that PFP
5 failed to provide subscriber agreements. To the contrary, my Fifth Affirmation, ¶ 23,
6 mentions this problem, which we have repeatedly called to the attention of PFP
7 counsel. In Exhibit KK, several of the entries showing monthly payments from
8 subscribers for less than \$999 are for companies whose subscription agreements have
9 not been provided to Pool World. (The 2018 and 2021 subscription agreements from
10 the two companies that the unredacted filing of Exhibit KK shows as paying \$500 and
11 \$750, respectively, per month in 2023 and 2024, **have** been provided). And, because
12 many of the subscribers have apparently renewed their initial subscription
13 agreements, there must have been documents memorializing the renewals, which also
14 have not been provided. Because the renewals could show whether monthly fees
15 under \$999 were continued, even though PFP failed to preserve records of monthly
16 payments for most of its subscribers, it is important for Pool World to obtain these
17 documents.
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23 9. Yet another false assertion on page 7, again not supported by any citation
24 to the record, is that Pool World has not contended that the subscription payments
25 that could be projected from the settlement agreements provided in discovery could
26 not be reconciled with the amounts of annual licensing income in the period
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beginning in 2017 to which Rebecca Jones attested in her interrogatory answers. In
1 fact, that precise concern was raised in Pool World's motion to compel discovery.
2 DN 60 at pages 4-5, citing my Third Affirmation, ¶ 18.
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10. The Opposition at pages 5-6, supported by the Declaration of Douglas
5 Fleurant, refers in passing to the fact that PFP "shares a bank account with another
6 corporation [Bad-Adz] (which shares the same princip[al], Joel Albrizio)." The
7 Opposition mentions this in passing (at 5-6), without specifically arguing that there
8 is a legitimate basis for redacting entries relating to Bad-Adz. So far as Pool Word
9 is aware, PFP supplies content to Bad-Adz; but no subscription agreement with Bad-
10 Adz has been provided, nor is there any documentation of Bad-Adz paying a monthly
11 fee for access to PFP's images. Moreover, in the threads of email communications
12 between PFP and subscribers produced pursuant to the Court's December 16, 2024
13 order, Rebecca Jones often writes to both Albrizio and Fleurant in their capacity as
14 officers of Bad-Adz, and Albrizio writes back in the same capacity—for example, the
15 Albrizio email directing Jones to cut off any subscriber who does not increase its
16 monthly payment to \$999, set forth in my Fifth Affirmation at ¶ 21, was written from
17 "joel@badadz.com." Similarly, when Albrizio warned Pool World owner Grady
18 Early that "this case has the potential to cost you a ton of money," he signed the threat
19 as president of Bad-Adz. It is unclear what steps PFP takes to maintain separation
20 from Bad-Adz, and Pool World reserves the possibility of asking the Court to pierce
21 the corporate veil.
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1 11. PFP also cites the fact that the Court has not issued a protective order in
2 this case. PFP, however, has not moved for entry of a protective order. In the
3 meantime, discovery has continued with Pool World agreeing not to disclose one
4 category of information—the names of PFP’s subscribers. On February 13, 2025,
5 PFP counsel sent Pool World counsel a draft protective order (based on a draft
6 discussed in 2023). Pool World counsel sent PFP counsel an edited version of the
7 proposed protective order on March 5, 2025. Notably, each of the drafts offered by
8 the parties provided for protecting from public disclosure the identities of companies
9 shown in financial records as making either subscription payments or payments
10 pursuant to settlements that they were induced to enter by PFP’s grossly exaggerated
11 assertions about the minimum payments needed to subscribe to PFP’s database.
12 Until an agreed protective order is presented to the Court and so ordered, Pool World
13 intends to refrain from revealing publicly the categories of information that would be
14 confidential under the proposed protective order that the parties have been discussing,
15 including the names of companies that have paid settlements to PFP where PFP
16 shows that the agreements include a confidentiality requirement.
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18 12. PFP objects to disclosing aspects of its bank statements reflecting its
19 payroll payments. The names of PFP’s employees may be relevant in investigating
20 an affidavit, filed in one of PFP’s other infringement actions, in which one of PFP’s
21 former employees levelled accusations of fraud against PFP (then called AdLife), and
22 reporting similar concerns on the part of other employees. Declaration of Sharon
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Ferretti in *AdLife Marketing and Communications v. Fareway Stores*, No. 1
4:17-cv-04254-SLD-JEH (C.D. Cal. Oct. 15, 2019), DN 44-7. AdLife contested the
2 veracity of the affidavit, Motion to Exclude Affidavit, DN 45, and the case settled
3 without any ruling on that issue. If Ferretti's accusations were true, it could cast
4 serious doubt on the validity of PFP's copyright registrations, which are a
5 jurisdictional predicate for this lawsuit, and otherwise undermine its accusations of
6 infringement as well as its reliance on the equitable discovery rule exception to the
7 statute of limitations. Pool World is investigating Ferretti's claims and determining
8 whether to rely on them in this case. Identifying PFP's employees from its bank
9 records could aid that endeavor.

13. PFP objects to producing sections of statements from CopyCat Legal
14 showing settlement payments received on behalf of clients other than PFP. When Mr.
15 DeSouza indicated that the redacted material to whose disclosure PFP objected
16 included amounts secured in settlement of infringement claims, he did not specify that
17 some of the claims were those his firm had asserted on behalf of other clients. Had
18 he told us that, we would have responded that recoveries for clients other than PFP
19 need not be disclosed. Pool World consents to redaction of recoveries for clients
20 other than PFP.

21. PFP now concedes (in the Fleurant Declaration) that it failed to preserve
22 records showing the great bulk of monthly subscriber payments from 2017 to March
23 2023 in the database of the "Payeezy" company. The Retailer Check emails, one
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example of which was attached to my Fifth Affirmation as Exhibit JJ, reflect that
1 some subscribers whose subscriptions originated in 2019 and 2020 continued that
2 status in 2024, after PFP stopped using Payeezy. No payments from those companies
3 are reflected in the Stripe payment spreadsheets for 2023 and 2024 submitted to the
4 Court as Exhibit KK. PFP has not explained why it has not produced any records of
5 payments from those companies. The names of such companies have been provided
6 to PFP counsel, who have simply refused to answer questions about the discrepancy
7 or to meet and confer on this issue.
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Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of
11 perjury that the foregoing is true and correct. Executed on March
12 18, 2025.
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14 /s/ Paul Alan Levy
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